

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

**SENSITIVE**

In the Matter of )

MURs 5817, 5827, 5829, 5836,  
5847, 5852, 5858, and 5863 )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

DEBATE CASES (From The '06 CYCLE) )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated  
matters) and are deemed inappropriate for review.

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated  
matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to  
dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852,  
5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the  
complainants challenged whether the debate staging organizations and entities used and/or  
properly construed pre-established objective criteria in order to determine whether a  
particular candidate could participate in their debate.<sup>2</sup> In MURs 5827 and 5829, the

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

MAR 23 A 31

<sup>2</sup> 11 C.F.R. § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

1 complainants claimed that the staging organization set up the seating for the debate in order  
2 to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).<sup>3</sup>

3 In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party  
4 candidates who appeared to receive marginal electoral support and evidenced little to no  
5 campaign organization. The staging organizations and entities in these cases claimed they  
6 applied pre-established objective criteria in assessing whether to include or exclude  
7 candidates from their debates.

8 In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to  
9 one candidate's supporters over another. The respondents in these matters asserted that the  
10 seating design was unintentional and in any case did not violate the Commission's  
11 regulations. Additionally, a claim that a \$200 corporate contribution was received by the  
12 staging organization was refuted.

13 In reviewing the allegations and responses in these matters, and in furtherance of the  
14 Commission's priorities and resources, relative to other matters pending on the Enforcement  
15 docket, the Office of General Counsel believes that the Commission should exercise its  
16 prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821  
17 (1985).

### 18 RECOMMENDATION

19 The Office of General Counsel recommends that the Commission dismiss  
20 MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two  
21 weeks from the date of the Commission vote, and approve the appropriate letters. Closing

<sup>3</sup> 11 C.F.R. § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."

these cases as of this date will allow CELA and General Law and Advice the necessary time  
to prepare the closing letters and the case files for the public record.

Thomaseenia P. Duncan  
Acting General Counsel

3/22/07  
Date

BY:

Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

1  
2  
3  
4  
5 **MUR 5852**

6  
7 **Complainant:** David Sole

8  
9 **Respondent:** Detroit Economic Club

10  
11 **Allegations:** Complainant alleges that he was improperly excluded from a debate held at  
12 the Detroit Economic Club between the Republican and Democratic candidates in  
13 Michigan's U.S. Senate election. Specifically, the Detroit Economic Club violated 11  
14 C.F.R. § 110.13(c), which sets out candidate selection criteria for debate sponsors,  
15 because it allegedly used the fact that the complainant was not nominated by a major  
16 party as its sole criteria for excluding him from debate participant. The complainant also  
17 alleges that the Detroit Economic Club received substantial subsidization from corporate  
18 interests and, therefore, was not entitled to sponsor candidate debates because its  
19 corporate connections amounted to the endorsement or support of major party candidates,  
20 to the exclusion of other party candidates, such as Mr. Sole.

21  
22 **Response:** The Detroit Economic Club responded that it used pre-determined objective  
23 criteria in selecting candidates for the debate. Specifically, the criteria for the selection of  
24 the candidates included: constitutional eligibility, ballot access, and demonstrated voter  
25 interest and support. The Detroit Economic Club observed that the complainant had not  
26 organized a candidate committee or received any press coverage.

27  
28 **General Counsel's Note:** It should be noted that David Sole did not file his Statement of  
29 Candidacy or Statement of Organization until after the election on November 28, 2006.

30  
31 **Date complaint filed:** October 19, 2006

32  
33 **Response filed:** November 20, 2006

27044164443